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C.R.P (PD).No.942 of 2022 and
C.M.P.No.4815 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	04.07.2022
Pronounced on	29.07.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

C.R.P (PD).No.942 of 2022 and
C.M.P.No.4815 of 2022

Natchal

... Petitioner

Vs.

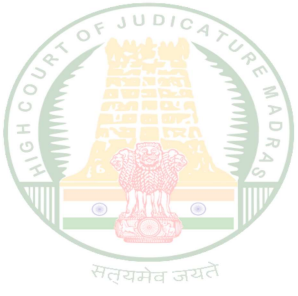
V.Chokkalingam

... Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in I.A.No.4 of 2021, in HMOP No.67 of 2020 dated 28.10.2021 on the file of the II Additional Sub Court, Coimbatore.

For Petitioner : Mr.V.Vijayakumar

For Respondent : Mr.S.Sithirai Anandan



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ORDER

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This Civil Revision Petition has been preferred to set aside the fair and decretal order passed in I.A.No.4 of 2021, in HMOP No.67 of 2020 dated 28.10.2021 on the file of the II Additional Sub Court, Coimbatore.

2. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the materials available on record.

3. The revision petitioner is the wife against whom the respondent husband has filed a petition in HMOP.No.67 of 2020, to declare the marriage as null and void. During the pendency of the proceedings, a petition was filed in I.A.No.4 of 2021, to subject the revision petitioner for medical examination. The said petition was allowed. Aggrieved over that, the petitioner has filed this Civil Revision Petition.

4. The learned counsel for the revision petitioner submitted that the medical examination on the petitioner was ordered to ascertain whether she had taken treatment for her health issues, which is beyond the scope of the pleadings made in the original petition; the respondent had filed a petition in



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I.A.No.4 of 2021, to refer the revision petitioner to the Medical Board in order

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to examine about her Hormonal imbalance and irregular periods; according to the revision petitioner, the petition has been filed just to damage the self-esteem of the revision petitioner and that cannot be encouraged; the learned Trial Judge has also ordered for examination of the genital organs of the revision petitioner in the guise of referring the revision petitioner for examining the complaint of hormonal imbalance and menstrual irregularity; though the revision petitioner had admitted the fact of non-consummation of marriage and menstrual irregularity, she has been unnecessarily referred for medical examination.

5. The learned counsel for the respondent submitted that the main allegation made by the respondent against the revision petitioner is that the revision petitioner is unfit for marital life and she did not cooperate with the respondent for conducting happy married life; she herself has admitted that even before marriage, she had irregular periods and hormonal imbalance and for which, she had taken treatment; however, no documents have been produced to show her health condition; since the medical report and examination of her medical condition would help to resolve the issue in



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dispute, the respondent has filed a petition in I.A.No.4 of 2021 and it has been rightly allowed.

6. The records would show that in the original petition filed by the respondent, he has stated that after marriage, the revision petitioner did not cooperate to have sex and refused for consummation. It is further alleged that the revision petitioner had told the respondent that she had hormonal imbalance and due to which, she is unable to cooperate with him to have sex. The grievance of the respondent is that the petitioner had suppressed about her health condition and other factors and cheated him. On these allegations, he filed a petition to annul the marriage solemnized between the revision petitioner and the respondent on 14.11.2018.

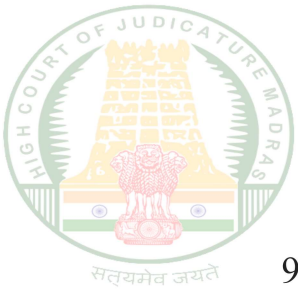
7. In the counter filed by the revision petitioner, it is stated that it is the respondent who was not willing to share the bed with her and even when she asked him to go for medical examination, he did not concede; since the revision petitioner had irregular periods, she informed the respondent and both of them went for medical examination; even on the advise of the doctor, the respondent omitted to produce the report of his sperm count. According to the



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revision petitioner, the respondent himself felt insecure, but blamed her for his inability.

8. For these kind of allegations, it would have been better if the learned Trial Judge had ordered for medical examination of both the parties. The Hormonal imbalance or irregular menstruation of the women, cannot be considered as female impotency or she is unfit to have sex. Despite the respondent himself has sought a prayer to refer the revision petitioner to Medical Board in order to get a report about her previous treatment for any of her health issues and allied issues, the learned Trial Judge had ordered to subject the revision petitioner alone for medical examination in order to give a report on irregular menstruation and hormonal imbalance. It is to be noted that the fact about the irregular menstruation was admitted by the revision petitioner herself. It is needless to say that the hormonal imbalance is associated with irregular menstruation. The revision petitioner herself has already gone to a gynaecologist and got examined and stated about those facts in her counter. Hence, it is unnecessary to ask her to subject to medical examination on the order of the Court.

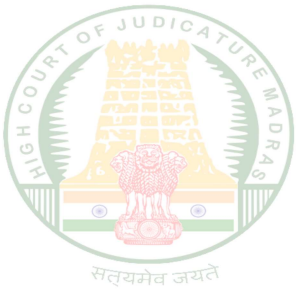


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9. The learned Trial Judge has gone to an extent further and observed in his order that the revision petitioner should prove satisfactorily that she is fit to have sexual relationship and to conceive a child. Even persons who are fit for sexual relationship and have active physical relationship may not conceive immediately for the reasons not known. Only when the couples understand themselves and obtain medical opinion and follow the advise of the doctors, the problem can be resolved. Here is the case where the couples throw allegations on each other that the other party is not active for consummation of the marriage.

10. When the revision petitioner has stated that she does not suffer from any structural defect of the genitals and her problem is only with regard to hormonal imbalance, such condition cannot be construed as impotency. Had the respondent filed a petition for dissolution of marriage by alleging mental cruelty due to non co-operation of the revision petitioner for having an active sexual life, it would have been a different situation. But, on the allegations of the hormonal imbalance and irregular periods, the respondent has filed the petition to annul the marriage by stating that it is void.

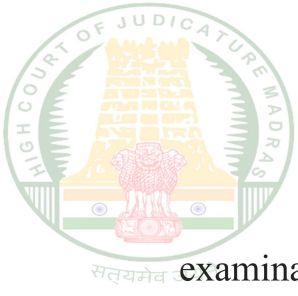


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11. In the same order passed by the learned Trial Judge, a clarification was also sought as to the medical examination for which the revision petitioner should be subjected. During that course, the learned Trial Judge has come to a conclusion that the revision petitioner should also undergo the examination of her genitals along with the other examinations connecting to irregular periods and hormonal imbalance. Since the above order is a clarification given to the order already passed, the said order also forms part of the impugned order. When the revision petitioner herself admitted about the non-consummation of marriage and the reason for it is the non-cooperation on the side of the respondent, to subject the revision petitioner for medical examination and that too for examining her genitals, would only affect her self esteem.

12. In fact, in the main petition itself, the trial seems to have been completed and the arguments were heard. The matter is at the stage of pronouncing judgment. Under such circumstances, the Family Court is at liberty to pass appropriate orders taking into account of the evidence available on record instead of directing the revision petitioner alone to go for medical



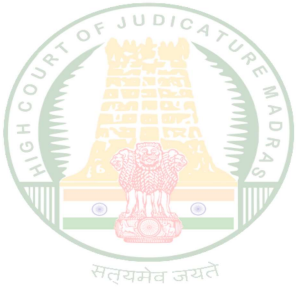
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examination in order to confirm the admitted facts about hormonal imbalance
and irregular periods.

13. In view of the above said reasons, this Civil Revision Petition stands allowed and the order passed by the II Additional Sub Judge, Coimbatore in I.A.No.4 of 2021, in HMOP No.67 of 2020 dated 28.10.2021, is set aside. No costs. Consequently, connected miscellaneous petition is also closed.

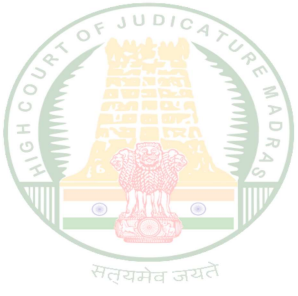
Index: Yes/No
Speaking / Non Speaking Order
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To
II Additional Sub Court, Coimbatore.



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R.N.MANJULA, J.

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